

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.11014 of 2017
and

W.M.P.No.11977 of 2017

V.Rajasekaran
S/o.D.Velayutham

.. Petitioner

Vs

1.The District Collector,
Office of the District Collector,
Thiruvallur District,
Thiruvallur.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town,
Chennai - 600 003.

3.The Zonal Officer - VII Zone,
Corporation of Chennai,
Camp at Ambattur, 93rd Ward,
Ambattur, Chennai - 600 053.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling upon the records of the first respondent pertaining to his proceedings in Na.Ka.No.17102/2016/ய-1, dated 24.12.2016 issued to the petitioner and quash the same.

For Petitioner :

Mr.N.Jothi, senior counsel
for M/s.M.C.Govindan

For Respondents No.1:

Mr.A.N.Thambidurai,
Special Government Pleader

For R2 & R3

:

Dr.C.Ravichandran, SC

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal.

2. Heard Mr.N.Jothi, learned senior counsel appearing for the petitioner, Mr.A.N.Thambidurai, learned Special Government Pleader, appearing for the first respondent and Dr.C.Ravichandran, learned Additional Government Pleader, appearing for the respondents 2 and 3.

3. The petitioner would state that during late 1980's, Brick Manufacturing Industries in and around the city of Chennai, had its closure and the brick fields and agricultural lands, which were used for brick manufacturing were converted into residential plots by duly having statutory recognition and approval and the petitioner, who is a Senior Project Manager (EUC operations) in a Multi National Company situated at Tharamani, Chennai, had purchased ground floor flat in a premises viz., 'Prosperous Bonanza', No.58-B, Padma Vijay Street, Golden George Nagar, Mugappair East, Chennai - 600107. It is also the claim of the petitioner that before effecting purchase, he had verified documents and got legal opinion.

4. The petitioner would further aver that the builder, namely, Mrs.Steffi George has also properly applied for planning permission on 28.05.2008 to the Ambattur Municipality, which in turn, had got authorisation from Chennai Metropolitan Development Authority, collected necessary levies also and the Ambattur Municipality granted planning permission and approval plan and construction has been put up strictly in accordance with the plan and the petitioner had occupied the ground floor flat and started paying the statutory levies.

4. The petitioner would submit that to the shock and surprise, he received a notice dated 24.12.2017 in Na.Ka.17102/2016/Aa1 from the office of the first respondent on 19.01.2018 informing that enquiry will be conducted on 19.01.2018 at 04.00 p.m. at his office and contents of the said notice would disclose that in terms of the order passed in W.P.No.26920 of 2013 pertaining to removal of the encroachment on water bodies, such enquiry would be conducted.

5. The petitioner, in response to the same, has appeared before the said official and gave his detailed submission dated 24.01.2017 denying the fact that the land on which the flats are located is not all water body and in fact, the petitioner in the

said writ petition has encroached only "Natham" poramboke land and residing there and also requested the first respondent to cause inspection of the area so that the real fact can be noted and therefore, prayed for dropping of further proceedings. Since no response is forthcoming after holding enquiry, the petitioner has sent his notice through lawyer to the first respondent on 06.02.2017 reiterating the stand taken by him before the first respondent and sought to rescind the summons and dropping further action, as he is a genuine person and not an encroacher of any water body at all. The petitioner, thereafter, came forward to file this writ petition challenging the impugned summons/notice dated 24.12.2017 issued by the first respondent.

6. Contending among other things that admittedly he is not a party to the order dated 16.06.2016 made in W.P.No.26920 of 2013 and as such, he is not at all aware of the contents of the same and he was not aware of the purpose of the summons issued to him along with 13 others and at the time of reaching office, he became aware of the same, the petitioner would also took a stand that the building has been put up after approval granted by the then local body viz., Ambattur Municipality. It has also been constructed strictly in accordance with law and subjected to statutory levies and also took a stand that Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the rules framed thereunder have also not been complied with and as such, the impugned notice/summons is per se illegal and unconstitutional.

7. The writ petition was entertained on 28.04.2017 and interim order of status quo as on date was granted.

8. The first respondent has filed counter affidavit and took a stand that the Document No.727/1987 does not reflect the land in Survey No.411 and as per the revenue records, the land in Survey No.412 is Government Poramboke Vaikkal and the FMB and Revision Survey and Re-Settlement Register and Town Survey Land Record would also reveal the said fact. The first respondent also took a stand that in Document No.727/1987, the vendors did not explain how they derived title to the lands in Survey Nos.411 and 412.

9. It is further stated by the first respondent that as per Field Inspection Report of Tahsildar, Ambattur and the Block Map prepared during Town Survey, the channel in S.No.411 was renumbered as T.S.No.51, 59, 59/2 Ward No.H, Block No.74 and shown as channel only and the predecessors in title of the writ petitioner have changed the field and converted the channel as unapproved layouts and even as per revenue records and TSLR, till date the land is registered in the name of Government.

10. In paragraph No.10 of the counter affidavit, the first respondent took a stand that they have not invoked the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, since the land comprised in Survey Nos.411 and 412 are not the tank or pond maintained by Public Works Department and the said land in question is a Government 'Poramboke Channel', a land vested with the Government so that only notice has been sent for enquiry under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

11. The petitioner, in response to the counter affidavit of the first respondent has filed reply affidavit dated 22.12.2017 reiterating the stand and would aver that in the impugned notice either the name of the Act or the extent of the land or specification of the land has been disclosed and no records were attached to the counter affidavit to substantiate the belated newly invented theory and prays for quashment of the impugned notice and allowing of the writ petition.

12. Per Contra, Mr.A.N.Thambidurai, the learned Special Government Pleader appearing for first respondent, would submit that though the petitioner has made challenge to the impugned notice, the fact remains that he has participated in the enquiry and gave his statement and subsequently, received the legal notice dated 06.02.2017 and in the light of the stand taken by the first respondent in paragraph No.10 of the counter affidavit, the flat will be removed under due process of law.

13. Dr.C.Ravichandran, learned Additional Government Pleader, appearing for respondents 2 and 3, would submit that since they have been added only as a formal party and in the absence of any relief against them, they have nothing to do.

14. This Court has considered the rival submissions and perused the materials on record.

15. It is the primordial stand of the first respondent that in the title deed bearing No.727 of 1987, in inner page No.5 of the document S.Nos.411 and 412 having been traced and in the first paragraph of the said page, admittedly S.No.411 has not been stated and further, in the subsequent paragraph as well as in the schedule S.No.411 has been included. However, this Court is not inclined to go into the same for the reason that it may involve adjudication of disputed question of facts. The fact remains that necessary approval has been accorded by the local body viz., Ambattur Municipality and according to the learned counsel appearing for the petitioner the dwelling units have been constructed strictly in accordance with sanction plan and the said units, which include the flat of the petitioner, are also subjected to statutory levies and the petitioner along with

his family continues to remain in possession and enjoyment of the same for quite long time and that he had purchased the flat with hard earned money.

16. The primordial submission made by the learned counsel appearing for the petitioner is that since the impugned notice would state about removal of encroachment of water bodies and in the absence of relevant particulars by enclosing documents, the impugned notice is per se illegal and unconstitutional. It is also the submission of the learned counsel that in support of the counter of the first respondent, no documents have been enclosed and provisions are to be invoked by the first respondent and in the absence of any relevant or material particulars, the impugned summons/notice issued by the first respondent is per se unconstitutional.

17. The Full Bench of this Court in the decision reported in 2015-5-L.W.-397 [T.K.Shanmugam, Secretary v. The State of Tamil Nadu, represented by its Secretary to Government], has considered the issue relating to removal of encroachment of water bodies viz., Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and Tamil Nadu Land Encroachment Act, 1905. It is relevant to extract para 27 of the said judgment:

"27. Section 11 of the Tank Act, specifically states that the operation of other laws not to be affected, as the provisions of the Tank Act shall be in addition to and not in derogation of any law for time being in force. Thus, the encroachments in respect of water bodies which are not covered under the provisions of the Tank Act have to be necessarily removed by resorting to the procedure under the Land Encroachment Act. We are not inclined to ignore the decisions issued by the Division Bench in L.Krishnan's case, as general observations, as observed in Sivakasi Region Tax Payers Association's case. We may hasten to add that in L.Krishnan's case, the Division Bench issued positive direction to the State Government and this cannot be brushed aside as general observations and more so in the light of the observations in the case of Jagpal Singh, wherein pointed directions were issued by the Hon'ble Supreme Court to all the Chief Secretaries. In Sivakasi Region Tax Payers Association's case though the Division Bench upheld the G.O.Ms.No.854, it held that the said G.O., must read along with the provisions of the Land Encroachment Act, Tank Act and Standing Orders of Board of Revenue. If that be the interpretation, the question would be empowered to issue Government Orders for regularizing encroachments in water bodies on the ground that the water body has

lost its character and it is no longer a water body on account of disuse. We may answer this query by referring to the observations of the Hon'ble Supreme Court in the case of Jaspal Singh:-

19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which served them for thousand of years.

20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."

18. No doubt, the impugned notice suggests about the order passed in W.P.No.26920 of 2013, which pertains to removal of encroachment of water body and called upon the petitioner to appear for enquiry on 10.01.2017 and accordingly, the petitioner appeared and made a detailed submission on 24.07.2017 and it is also followed by a legal notice dated 06.02.2017 and till the filing of the writ petition, no response was forthcoming from the office of the first respondent as to the effect of the enquiry conducted by the said officials. However, the first respondent, in the counter affidavit in paragraph No.10, took a categorical stand that the said official has not invoked the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, as the lands comprised in S.Nos.411 and 412 are not the tank or pond maintained by the Public Works Department and since the lands are with the Government, notice and enquiry would be done under Tamil Nadu Land Encroachment Act, 1905. In the light of the stand taken by the first respondent in the counter affidavit, if the respondents 2 and 3 are so advised, they are at liberty to invoke the provisions of Tamil Nadu Land Encroachment Act, 1905, and rules framed thereunder as to the removal of the alleged encroachment and alleged water bodies in S.Nos.411 and 412 of Mogappair Village,

Thiruvallur District and till such time, shall not demolish the premises of the petitioner.

The writ petition stands disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gm
To

- 1.The District Collector,
Office of the District Collector,
Thiruvallur District,Thiruvallur.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,Park Town, Chennai - 600 003.
- 3.The Zonal Officer - VII Zone,
Corporation of Chennai,
Camp at Ambattur, 93rd Ward,
Ambattur, Chennai - 600 053.

+1cc to Mr.Dr.C.Ravichandran , Advocate, S.R.No.26833
+2cc to Mr.Govindan, Advocate, S.R.No.26690
+1cc to the Government Pleader, S.R.No.27216

ssv(co)
nr 15/05/2018

W.P.No.11014 of 2017

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